

REMARKS

Claims 1, 2, 4-16 and 24 are pending in this application. Claim 1 has been amended and claims 25-26 has been added by the present Amendment. Amended claim 1 and new claims 25-26 do not introduce any new subject matter.

Claims 14-15 have been withdrawn from consideration without prejudice pursuant to 37 C.F.R. § 1.142(b), as being drawn to a non-elected invention and have been canceled without prejudice by the present Amendment. In addition, claims 4, 5 and 9-13 have been canceled without prejudice by the present Amendment.

REJECTIONS UNDER 35 U.S.C. § 102

Reconsideration is respectfully requested of the rejection of claims 1, 2, 4-7, 9-11 and 16 under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,576,233 ("Hutter").

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. v. Union Oil Co. of California, 814 F.2d 628, 631, 2 U.S.P.Q.2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the . . . claim." Richardson v. Suzuki Motor Co., 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989); M.P.E.P. § 2131.

Applicants have canceled claims 4, 5, and 9-11 without prejudice. Accordingly, Applicants address the rejections of remaining claims 1, 2, 6-7 and 16.

Claims 1, 2 and 6-7

Applicants respectfully submit that Hutter does not disclose or suggest a control gate that is formed over the second portion of the floating gate, wherein an area of the

isolation layer covered by the second portion is greater than an area of the isolation layer covered by the control gate, as recited in amended claim 1.

For example, the control gate 150a, shown in Figs. 4 and 5 of Applicants' disclosure, is formed within the boundaries of floating gate 120a and overlaps less area of the isolation layer 105 than the second portion of the floating gate. In contrast to the claimed embodiment, the control gate 25 of Hutter extends beyond the boundaries of the body region 46 of the floating gate 19, and covers more area than the body region 46. See Hutter, Fig. 1.

Therefore, Applicants respectfully submit that claim 1 is not anticipated by Hutter. For at least the reason that claims 2 and 6-7 depend from claim 1, claims 2 and 6-7 are also submitted not to be anticipated by the cited reference. Claims 4, 5 and 9-11 have been canceled.

Accordingly, Applicants respectfully request that the Examiner withdraw the rejection of claims 1, 2, 4-7 and 9-11 under 35 U.S.C. § 102(b).

Claim 16

Applicants respectfully submit that Hutter does not disclose or suggest the second gate oxide layer that is thinner than the first gate oxide layer, as recited in claim 16.

For example, the second gate oxide layer 124 shown in Fig. 8 of Applicants' disclosure is thinner than the first gate oxide layer 122.

The Examiner maintains that the oxide layer 14 is thinner than the oxide layer 38 shown in Fig. 2a (cross sections 1-1 and 3-3). See April 19 Office Action at 6. However, a review of Fig. 2a does not reveal that there is any difference in thickness

between layers 38 and 14. Further, the specification of Hutter does not appear to include any disclosure regarding a thickness difference between layers 14 and 38.

Applicants also note that the specification of Hutter is silent as to scale or dimensions of the drawings, and therefore, cannot be relied on as showing a difference in thickness between the two layers. See M.P.E.P. § 2125 (Rev. 10/05) (stating that when the reference does not disclose that the drawings are to scale and is silent as to dimensions, arguments based on measurement of the drawing features are of little value; and citing Hockerson-Halberstadt, Inc. v. Avia Group Int'l, 222 F.3d 951, 956, 55 USPQ2d 1487, 1491 (Fed. Cir. 2000), which states that "it is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue.")

Therefore, Applicants respectfully submit that claim 16 is not anticipated by Hutter.

Accordingly, Applicants respectfully request that the Examiner withdraw the rejection of claim 16 under 35 U.S.C. § 102(b).

REJECTION UNDER 35 U.S.C. § 103(a)

Reconsideration is respectfully requested of the rejection of claim 8 under 35 U.S.C. § 103(a) as being unpatentable over Hutter in view of U.S. Patent No. 6,339,000 ("Bhattacharya").

Applicant respectfully submits that Hutter, when taken alone or in combination with Bhattacharya, fails to teach or suggest a control gate that is formed over the second portion of the floating gate, wherein an area of the isolation layer covered by the second portion is greater than an area of the isolation layer covered by the control gate,

as recited in amended claim 1.

As stated above, Hutter does not disclose this feature. Furthermore, the addition of Bhattacharya does not cure the deficiency in Hutter. Indeed, Bhattacharya shows a control gate 102 covering the same area as a floating gate 106.

Therefore, it is respectfully submitted that the cited references, when taken alone or in combination, do not disclose or suggest the embodiment of the present invention, as defined in amended claim 1, and that it would not have been obvious to modify Hutter, in view of Bhattacharya, to develop same.

As such, Applicants respectfully submit that the embodiment of the invention as defined in amended claim 1 is patentable over Hutter, in view of Bhattacharya. For at least the reason that claim 8 depends from claim 1, claim 8 is also submitted to be patentably distinct over the cited references.

Accordingly, Applicants respectfully request that the Examiner withdraw the rejection of claim 8 under 35 U.S.C. § 103(a).

NEW CLAIMS

Applicants respectfully submit new claims 25-26 for consideration and that new claims 25-26 are patentable over the cited references for at least the reason of their dependency on claim 24, which has been allowed. New claims 25 and 26 are claims 10 and 13 rewritten to depend from claim 24.

An early and favorable reconsideration is earnestly solicited. If the Examiner has any further questions or comments, the Examiner may telephone Applicants' Attorney to reach a prompt disposition of this application.

Respectfully submitted,



Michael F. Morano
Reg. No. 44,952
Attorney for Applicants

F. CHAU & ASSOCIATES, LLC
130 Woodbury Road
Woodbury, NY 11797
(516) 692-8888